

Compliance with the FTC Telemarketing Sales Rule

Brought to you by the ITV Direct Legal Department

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Today's Lesson

- The objective of the TSR
- What information must telemarketers disclose: Material Information and “clear and conspicuous” language
- Prohibited Misrepresentations
- Payment Protocol: Authorization Policies and Express Informed Consent (“AUA”)
- Penalties for violations

The Federal Trade Commission's Amended Telemarketing Sales Rule

- Passed in 2003, this legislation gives the FTC and state attorneys general law enforcement tools to:

 **Combat telemarketing fraud.**

 **Give consumers added privacy protections** and defenses against unscrupulous telemarketers.

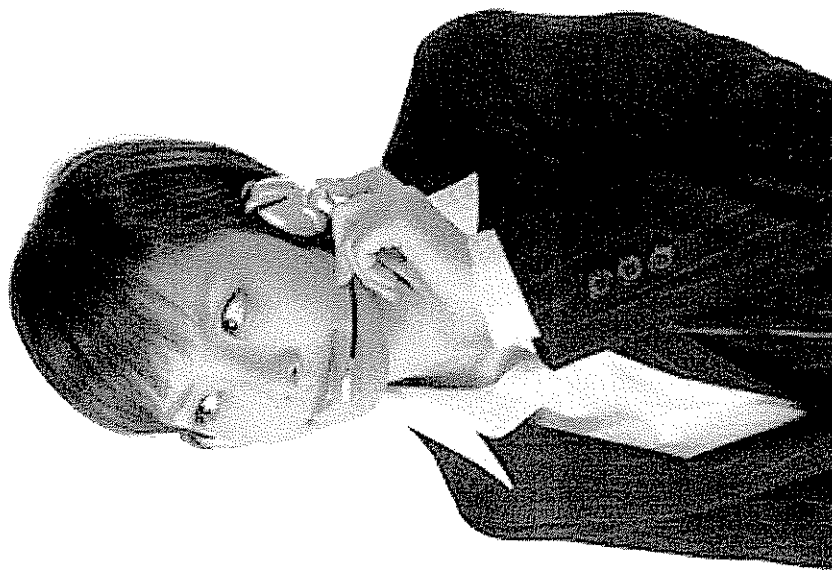
 **Help consumers tell the difference** between fraudulent and legitimate telemarketing.





 **Scope** is both inbound and outbound calls.

INBOUND vs. OUTBOUND

- Outbound: is a call initiated by a telemarketer to a consumer.
- Inbound Call: is a call from a consumer in response to a media advertisement.

What Information must Sellers and Telemarketers Disclose?



-  Cost, Quantity, Frequency
-  Material Restrictions,
Limitations, or Conditions
-  No-Refund Policies
-  Negative Option
Features/Continuity

Cost and Quantity

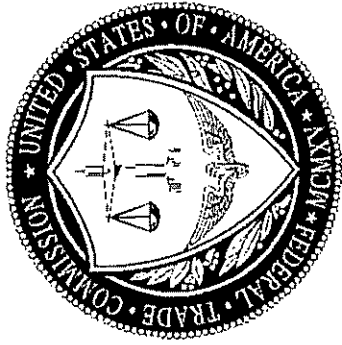
- You must disclose **total costs** to purchase, receive or use the offered goods or services.
- You must tell a consumer the **total quantity** of goods the consumer must pay for and receive.
- You must provide both these items of material information to the consumer **before the consumer pays** for the goods or services that are the subject of the sales offer.

Cost and Quantity

- A seller or telemarketer offering a negative option or a continuity plan must disclose:
- The total costs and quantity of goods or services that are part of the **initial offer**
- The total quantity of additional goods or services that a consumer must purchase **over the duration of the plan**
- The cost, or range of costs, to purchase **each additional good or service separately**
- The **number/frequency** of debits, charges, or payments (if more than one).
- The **amount** of the debits, charges, or payments.
- The **customer's name and billing information**
- A **telephone number** that is answered during normal business hours by someone who can answer the consumer's questions.

Cost and Quantity

- Sometimes, cost and quantity are undetermined at the time of the initial sale.
- In a **negative option plan**, the consumer may agree to purchase a specific number of items over a specified time period. The consumer must then contact the company to stop further shipment.
- A **continuity plan** offers a subscription to a collection of goods. Consumers buy an introductory selection and receive additional selections on a regular schedule until they cancel their subscription.



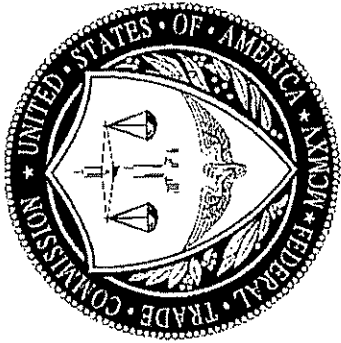
Material Information

- **DEFINITION:** Information a consumer needs to make an **informed decision** about whether to purchase goods or services.
- Sellers and telemarketers, whether making outbound calls to consumers or receiving inbound calls from consumers, must provide certain **material information** before the consumer pays for the goods or services that are the subject of the sales offer.



Material Information

- Sellers and telemarketers may provide the material information either **orally or in writing**.
- Failure to provide any of the required information truthfully and in a “**clear and conspicuous**” manner, **before the consumer pays** for the goods or services offered, is a deceptive telemarketing act or practice.
- Violations of the Rule subject a seller or telemarketer to a civil penalty of **\$11,000 for each violation**.



“Clear and Conspicuous”

- DEFINITION: Information is presented in a way that a consumer will notice and understand.
- The goal is that disclosures be communicated **as effectively as the sales message.**
- When disclosures are oral, clear and conspicuous means at an **understandable speed and pace and in the same tone and volume as the sales offer.**

Material Restrictions, Limitations, or Conditions

- **DEFINITION: A restriction, limitation, or condition** that would likely affect the decision to purchase the goods or services offered, to purchase them at the offered price, or to purchase them from that particular seller.

Material Restrictions, Limitations, or Conditions

- Such restrictions could include the underlying illegality of goods or services in a particular state, or a requirement that a consumer pay in cash or by money order.
- Sellers may disclose restrictions orally or in writing, as long as the information is presented in a “**clear and conspicuous**” manner **before the customer pays**.

No-Refund Policies

- If a company has a policy of honoring requests for refunds, cancellations of sales or orders, exchanges, or re-purchases, sellers and telemarketers must disclose information about the policy **only if they make a statement about the policy** during the sales presentation.

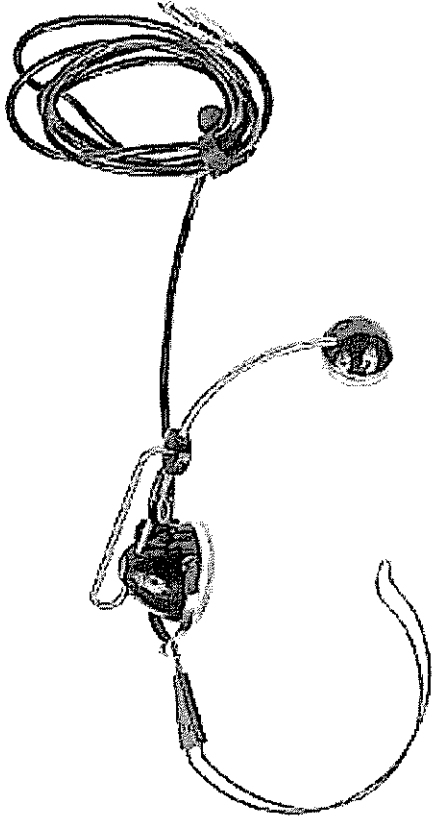
No-Refund Policies

- If the policy is “**all sales are final**,” the Rule requires you to let consumers know before they pay for the goods or services being offered.
- Once again, information must be disclosed in a **clear and conspicuous** manner.

Negative Option Features


- **DEFINITION:** The seller interprets the consumer's silence, or failure to reject goods or services or cancel an agreement as acceptance of the offer.
- **Example: "Free-to-pay conversion" offer (a.k.a. "free-trial offer")**
- Customers receive a product or service for free for an initial period and then have to pay for it if they don't take action to cancel.


Negative Option Features




- Under the TSR, a seller offering a Negative Option Feature must **truthfully, clearly and conspicuously** disclose three pieces of information:

Negative Option Features

 The fact that a consumer's account will be charged **unless he or she takes affirmative action-** such as canceling- to avoid the charge.

 The **date (s)** on which the charge (s) will be submitted for payment. An approximate date is acceptable, provided reasonable notice is given the consumer of when to expect the charge.

 The **specific steps the customer must take** to avoid the charges. If calling a toll-free number is entailed in this process, the number must be given.

Continuity Plan

- **Continuity plan** offers a subscription to a collection of goods. Consumers buy an introductory selection and receive additional selections on a regular schedule until they cancel their subscription
- What do we need?

Oral Authorization

- Any audio recording of an oral authorization for payment must clearly demonstrate that the consumer has received each **specific pieces of information** about the transaction and that the consumer has authorized that funds be taken from (or charged to) his or her account.
- The Rule requires **affirmative consent** * (“**yes**”) to a question to be deemed acceptable.

OUR SCRIPT

- **AUTO SHIP CONFIRMATION**

- “Before I let you go _____, I just want to quickly confirm your order with you, so we are both clear on what you will be receiving...”
- “You will receive your (1 month, 3 month, 6 month, 1 year) supply of _____ in (*express shipping* 3-5 days or 2-4 weeks) and it is going to be shipped to (confirm address). We will be billing your credit card (total amount of package) today.”

- “You have also agreed to sign up for our continuity program, so once your supply is up (1 month, 3 month, 6 month, 1 year) you will automatically receive your re-supply (state frequency) in the mail for _____ (amount of monthly re-supply varies on whatever package deal customer agreed to).”
- “Is all of this information correct and do you agree to the terms of this offer? (**Must get YES**) If at any time you want to change, modify, or cancel your order you may do so by calling 1.800.215.0063.”
- “Thank you for your order today and your confirmation invoice number is (give invoice #, **not contract genie #**).”
- **CUSTOMER SATISFACTION**
- “If you have any other questions or would like to check on the progress of your order, please feel free to contact our Customer Satisfaction Department at 1.800.215.0063”

What Is *Express Informed Consent?*

- Express Informed Consent is required in **every telemarketing transaction**.
- Consent is an **affirmative statement (“yes”)** that the consumer agrees to purchase the goods or services and is **aware that the charges** will be billed to a particular account.
- Consent is **express** if it is **affirmatively** and **unambiguously articulated** by the consumer.

AUA

- **Affirmative**
- **Unambiguous**
- **Articulation**
- **Silence is not AUA**

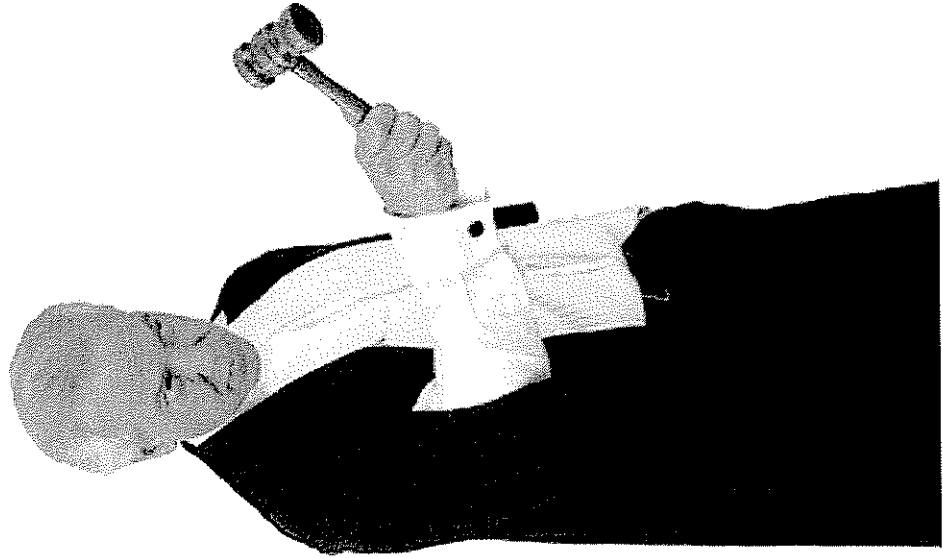
Misrepresentations Are Strictly Prohibited


- The Rule prohibits sellers and telemarketers from making **false or misleading statements** to induce anyone to pay for goods or services.


Misrepresentations Are Strictly Prohibited


- The Rule prohibits both **express** and **implied misrepresentations**.
- Sellers and telemarketers cannot circumvent the Rule by creating a **false impression in a consumer's mind** through the artful use of half-truths or misleading or incomplete information.

The Rule Prohibits Misrepresentations about the Following:



 Cost, Quantity,
Frequency

 Material Restrictions,
Conditions, or
Limitations

 Performance, Efficacy,
or Central
Characteristics

 Refund, Repurchase or
Cancellation Policies

Misrepresentation of Cost and Quantity

- The Rule prohibits sellers and telemarketers from misrepresenting the **total costs** to purchase, receive, or use the goods or services offered, or the **quantity of goods or services** offered at the stated price.
- For example, you may not tell consumers that they may purchase a magazine subscription for three years at \$1.50 a month, when the subscription is available at that price for one year only.

Misrepresentation of Material Restrictions, Conditions, or Limitations

- The Rule prohibits sellers and telemarketers from **misrepresenting any material restriction, limitation, or condition** to purchase, receive, or use goods or services offered to the consumer.
- For example, if a marketer states “absolutely free” with you first order, that must be clearly conveyed to the consumer.

Misrepresentation of Performance, Efficacy or Central Characteristics

- The Rule prohibits sellers and telemarketers from **misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics** of the goods or services offered to the consumer.
- For example, it is prohibited to **falsely claim** that an offered product or program **treats, cures or prevents any disease.**

Misrepresentation of Refund, Repurchase, or Cancellation Policies

- The Rule prohibits sellers and telemarketers from misrepresenting any material aspect of the nature or terms of the seller's **refund, cancellation, exchange, or repurchase policies.**

Guarantees

- If an ad mentions that a product comes with a guarantee or warranty, the ad and the sales representative should clearly disclose **how consumers can get the details.**
- The law requires companies to make copies of any warranties/guarantees **available to consumers before the sale.**
- This applies to retail sales, **sales by phone or mail, and online transactions.**

Unauthorized Billing

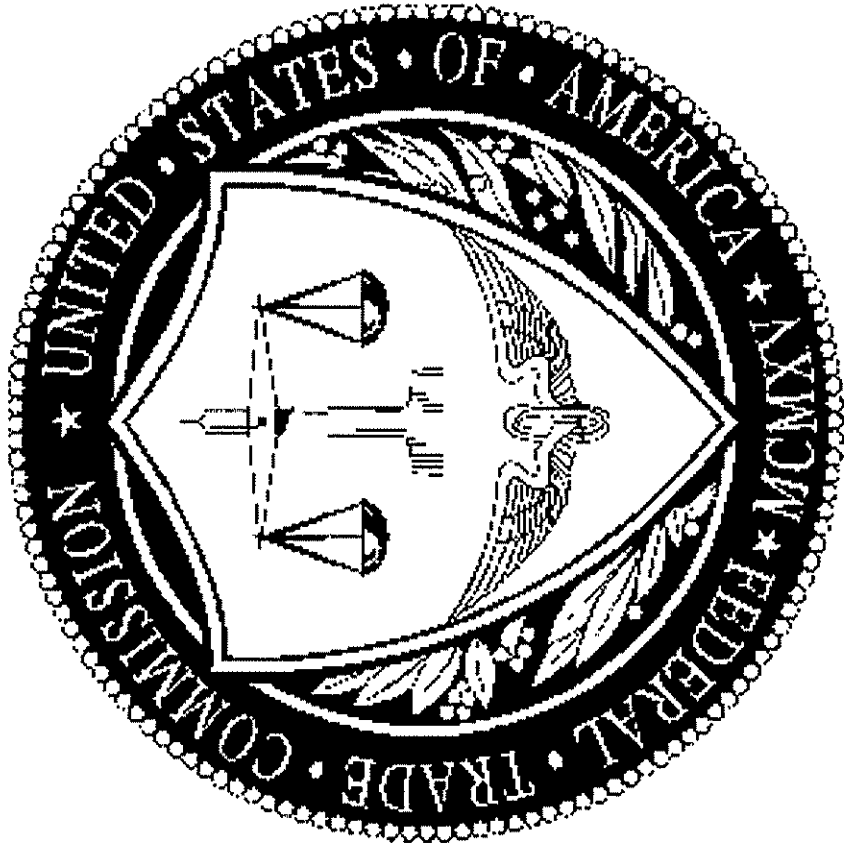
- It is a violation of the Rule to cause billing information to be submitted for payment without the **express informed consent**.
- In any telemarketing transaction, sellers and telemarketers must obtain the **express informed consent** of the customer to be charged a specific amount on a particular identified account, to pay for the goods or services offered.

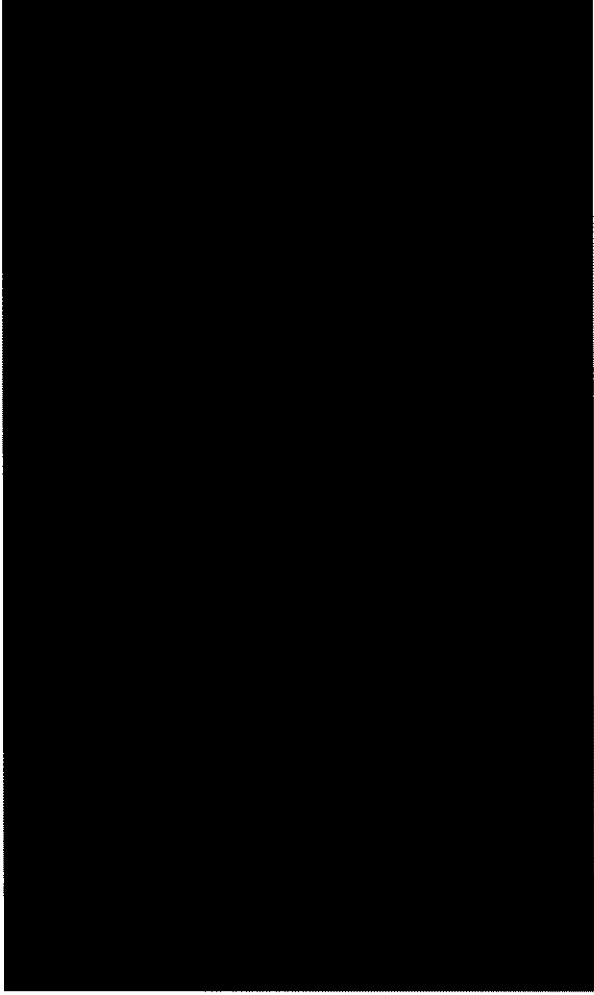
Government/Clients/Providers

- Food and Drug Administration
- States Attorneys General (Little FTC Acts)
- Federal Communications Commission
- Merchant Provider
- Clients

Penalties for Violations

- Any company which violates the Rule is subject to civil penalties of up to **\$11,000 per violation**.
- In addition, violators may be subject to **nationwide injunctions** that prohibit certain conduct, and may be required to pay redress to injured consumers.





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Thank you for your time.

For more information on the TSR, visit www.ftc.gov or <http://www.the-dma.org/guidelines/ethicalguidelines.shtml> for The Direct Marketing Association's set of Ethical Guidelines.